

MAY 05 2005

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FEDERAL ELECTION  
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BEFORE THE FEDERAL ELECTION COMMISSION

2005 MAY -5 A 10: 02

**SENSITIVE**

MUR 5573

In the Matter of )  
 )  
Westar Energy, Inc. )  
David Wittig )  
Douglas Lake )  
Carl M. Koupal, Jr. )  
Douglass Lawrence )  
Richard Bornemann )  
Governmental Strategies, Inc. )

GENERAL COUNSEL'S REPORT # 2

**I. ACTIONS RECOMMENDED:** Accept the attached proposed conciliation agreements with Westar Energy, Inc., Carl M. Koupal, Jr., and Douglass Lawrence; sever David Wittig and Douglas Lake; open a new MUR as to them and authorize an investigation.

**II. BACKGROUND**

On October 19, 2004, the Commission found reason to believe that Westar Energy, Inc., David Wittig, Douglas Lake, Carl Koupal and Douglass Lawrence violated 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 110.6(b)(2) and 114.2(f), and that Governmental Strategies, Inc., and Richard Bornemann violated 11 C.F.R. § 114.2(f) of the Federal Election Campaign Act of 1971, as amended ("the Act").<sup>1</sup> At the same time, the Commission authorized entering into pre-probable cause conciliation with all respondents. The basis for the Commission's findings was evidence that Westar, its top executives, and an outside lobbyist facilitated the making of earmarked contributions apparently totaling \$52,050 in 2000 and 2002.

<sup>1</sup> All of the activity addressed in this Report occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended ("the Act"), herein are to the Act as it read prior to the effective date of BCRA.

PAGES 2-5 HAVE BEEN REMOVED

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**IV. WITTIG AND LAKE**

David Wittig was Westar's president and CEO during the relevant time period, and

Douglas Lake was vice president for corporate strategy and the second in command. Wittig

actively participated in the facilitation and consented to it by creating contributions schedules for

the solicited executives, deciding to whom contributions should be given, soliciting executives

1 for contributions, making contributions himself, and forwarding his own contributions to Koupal  
2 or Lawrence for delivery. Lake also made contributions and gave them to Koupal or Lawrence  
3 for delivery. He also was aware of and consented to the bundling and forwarding of  
4 contributions by Lawrence and Koupal on behalf of Westar.

5 When Wittig and Lake received the Commission's reason to believe findings in  
6 November 2004, they were defending themselves in a federal criminal trial in Kansas.<sup>3</sup> Both  
7 requested extensions of time to respond to the Commission's Factual and Legal Analysis until  
8 after the end of the criminal trial, which they expected to conclude by mid- to late-December.  
9 Accordingly, this Office granted them extensions of time in which to respond and enter into  
10 conciliation discussions.

11 In their separate responses, Wittig and Lake unequivocally denied liability  
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17 we plan to conduct a  
18 short investigation and then proceed to the next stage of the enforcement process. This Office  
19 would like to seek additional evidence of Wittig and Lake's consent to the facilitation, including  
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<sup>3</sup> The 40-count charge apparently resulted from the April 2003 Special Report, which detailed a variety of corporate abuses Wittig and Lake allegedly committed while working as the top two executives at Westar. Ultimately, the jury could not reach a verdict. The judge, therefore, declared a mistrial on December 20.

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the facilitation that occurred between October and December 2002 after Westar ceased bundling the contributions on the advice of counsel. *See, supra* at 3.

Finally, we recommend that Wittig and Lake be severed from the current MUR and that a new MUR be opened as to them so that the appropriate documents regarding the settling respondents will be available to the public as soon as possible.

**V. RECOMMENDATIONS**

1. Accept the attached conciliation agreements with Westar Energy, Inc., Carl M. Koupal, Jr., and Douglass Lawrence, and close the file as to these respondents.
2. Sever David Wittig and Douglas Lake from MUR 5573, open a new MUR as to them, and authorize the use of compulsory process to investigate the matter.
3. Approve the appropriate letters.

Lawrence H. Norton  
General Counsel

5/4/05  
Date

BY: Rhonda J. Vosdingh  
Rhonda J. Vosdingh  
Associate General Counsel for Enforcement

Ann Marie Terzaken  
Ann Marie Terzaken  
Assistant General Counsel

Elena Paoli  
Elena Paoli  
Attorney

**Attachments**

1. Leonard Mitchell Affidavit, Dec. 13, 2004
- 2.
3. Douglass Lawrence Affidavit, January 27, 2005
4. Westar Energy, Inc., Proposed Conciliation Agreement
5. Carl M. Koupal, Proposed Conciliation Agreement
6. Douglass Lawrence, Proposed Conciliation Agreement

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ATTACHMENT 1

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Westar Energy, Inc.

)  
)  
)

MUR 5573

AFFIDAVIT OF LEONARD MITCHELL

I, Leonard Mitchell, being duly sworn, depose and say:

1. I am employed by Westar Energy, Inc. ("Westar") as the Director of Facilities Management. Among my responsibilities is security for the Westar building. I have been employed by Westar for 31 years.

2. As Westar's Director of Facilities Management, I am aware that from time to time elected federal and state officials visit with the Senior Executives at the Westar facility in Topeka, Kansas.

3. I was requested by counsel for Westar to review corporate records to determine whether certain Congressman and a specific U.S. Senator visited the Westar facility in January and February 2002. The Congressmen I was to search for were Jim Ryun, Todd Tiahrt and James Moran, Jr. The U.S. Senator I was searching for was Senator Sam Brownback.

4. Based on my review of Westar corporate records, which have been maintained in the normal course of business, they show that Congressmen Ryun and Moran were visiting at Westar on January 9, 2002, that Congressman Tiahrt was visiting at Westar on January 25, 2002, and that Senator Brownback was visiting at Westar on February 20, 2002.

5. Corporate records of visits by congressmen, senators and other public officials no longer exist for the years 2000 and 2001. Those records were destroyed earlier this year in the normal course of business.

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I hereby declare to the best of my knowledge that the foregoing information is true and accurate.

  
Leonard Mitchell

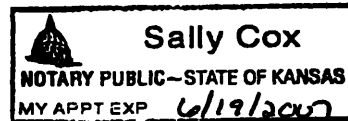
STATE OF Kansas )

ss:

COUNTY OF Shawnee )

Personally appeared before me Leonard Mitchell and being first duly sworn by me acknowledged that he signed the foregoing document and declared that the statements therein contained are true this 13<sup>th</sup> day of December, 2004.

  
Notary Public  
My Commission Expires: 6/19/2007



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ATTACHMENT 3

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )

Douglass Lawrence )

MUR5573

AFFIDAVIT OF DOUGLASS LAWRENCE

I, Douglass Lawrence, being duly sworn, depose and say:

1. I am a resident of the State of Kansas. I was a member of the Kansas Legislature until 1996 and I am currently employed as a lobbyist in Kansas.
2. In September 2001, I began to work for Westar Energy, Inc. ("Westar") as a consultant. On November 15, 2001, I was employed directly by Westar as its Vice President for Governmental Affairs. I held this position until the end of 2002 when I voluntarily terminated my position at Westar.
3. Prior to my employment by Westar I had limited experience in federal election law and was only generally familiar with the Federal Legislation process. After joining Westar I learned that officers from Westar historically had limited their federal political contributions to Kansas Candidates for Federal Congressional and Senatorial positions.
4. After joining Westar on or about November 27, 2001, I learned that the company had hired Richard Bornemann, a lobbyist, to handle issues regarding a plan to insert regulatory exemptions by grandfathering existing law, which was targeted for repeal, in the then pending Federal Energy Bill.
5. In January and February of 2002 the Kansas Delegation, to include Representatives Moran, Ryan, Tiahrt, and Senator Brownback, came to visit

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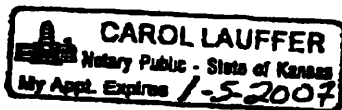
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Westar, and spoke with officers of Westar regarding a variety of issues including security, employment, and the proposed Federal Energy Bill. At these meetings, officers made personal contributions to the Campaign Committee Aides of the Congressmen in attendance. I have reviewed the Affidavit of Leonard Mitchell dated December 13, 2004, and agree with its contents as it relates to the visits of Kansas Congressional and Senatorial Candidates visiting Westar in January and February of 2002.

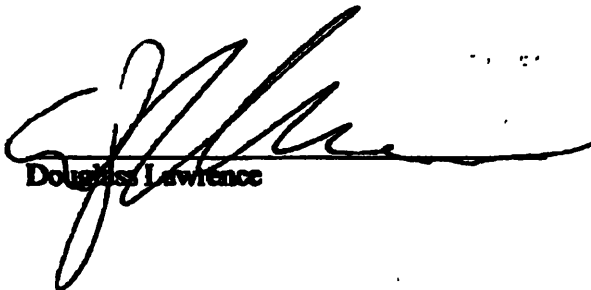
6. I received a memo from Richard Bornemann dated April 23, 2002, regarding Federal Election participation, which I presented for review to David Wittig, the then President and CEO of Westar. The plan, proposed by Richard Bornemann, was to elevate Westar's profile among Members of Congress who were active in the effort to enact new energy legislation. The Bornemann plan, called for campaign contributions totaling approximately \$56,500, of which \$31,500 would be in the form of hard money individual contributions to federal candidates.
7. David Wittig, approved contributions and recipients as suggested by the Bornemann April 23, 2002 memo. He devised a formula to raise this amount of money through the thirteen most senior executives, including himself and Douglas Lake. Wittig assumed the greatest financial responsibility, followed by Douglas Lake, and then in decreasing amounts to the eleven remaining senior executives in the company, based on their respective pay grades. I then sent various inter-office memoranda reflecting the suggested contribution amounts and when the requested contributions would be needed by the selected campaigns.

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8. When checks were collected from the various executives by myself or Kathy Volpert, she would put them in a Federal Express envelope and have them shipped to Richard Bornemann in Washington, D.C. or the candidates committee. Mr. David Wittig had knowledge of these contributions being collected and being forwarded to Richard Bornemann, Westar's D.C. lobbyist, for further distribution to the candidate's campaign committees. We likely made three shipments by Federal Express between May and October 2002, although it is possible that there could have been one or two additional rush shipments.
9. Beginning in October 2002, each officer making a contribution would individually place that contribution in an envelope and seal it, which then would be forwarded directly to the candidate via Federal Express. With the exception of my own contribution, I neither collected nor placed these contributions in envelopes, nor did I direct my assistant to do so.



Subscribed and sworn to before  
me this 27<sup>th</sup> day of January, 2005.

  
Douglas Lawrence

  
Notary Seal